

Notice of Allowability

Application No.

10/551,202

Examiner

Rebecca L. Anderson

Applicant(s)

WEST ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 3/27/2007.
2. ☒ The allowed claim(s) is/are 5, 7-11, 17, 28 and 29, now renumbered as claims 1-9.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 6/29/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20070608 .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Claims 5, 7-11, 17, 28 and 29 are currently pending in the instant application, appear allowable over the prior art of record and have been renumbered as claims 1-9.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lee Crews on 8 June 2007.

The application has been amended as follows:

1. Cancel claims 24-27 and 30-33.
2. Amend claim 28 by deleting "The phosphate derivative of claim 24, wherein the derivative is" from the first line of the claim.
3. Amend claim 29 by deleting "The phosphate derivative of claim 25, wherein the derivative is" from the first line of the claim.

Election/Restrictions

Applicant's election with traverse of Group XX in the reply filed on 3/27/2007 is acknowledged. Upon further consideration, the examiner has rejoined and searched and examined groups XXIV, XXVIII and XXXII, claims 8-11, as all methods of groups XXIV, XXVIII and XXXII are dependent upon the methods of Group XX. Additionally, the examiner has also included newly added claims 28 and 29 for search and

Art Unit: 1626

examination. The lack of unity requirement in regards to groups other than XX, XXIV, XXVIII and XXXII is maintained.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance. This invention relates to a method of phosphorylating atorvastatin and to two specific phosphate derivatives of atorvastatin. The novel and nonobvious aspect of this invention involves the use of an alkali metal salt of a fatty acid in the process of phosphorylating atorvastatin with P4O10 and involves the chemical formulas of the two specific phosphate derivatives of atorvastatin. The closest prior art of record, which discloses the phosphorylation of complex alcohols with P4O10 in the presence of free fatty acids fails to teach or suggest the instantly claimed phosphate derivatives of atorvastatin and fails to teach or suggest the phosphorylation of atorvastatin with an alkali metal salt of a fatty acid.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday from 6:00am until 2:30pm.

Art Unit: 1626

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Rebecca Anderson/
Primary Examiner, AU 1626*

8 June 2007

Rebecca Anderson
Primary Examiner
Art Unit 1626, Group 1620
Technology Center 1600